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Avago Technologies General IP (Singapore) Pte. Ltd.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

AVAGO TECHNOLOGIES GENERAL IP
(SINGAPORE) PTE. LTD.,

Plaintiff,

v.

ASUSTEK COMPUTER INC. and ASUS
COMPUTER INTERNATIONAL,

Defendants.

CASE NO. 3:15-CV-04525-EMC

**STIPULATED [PROPOSED]
SUPPLEMENTAL PROTECTIVE
ORDER FOR MICROSOFT TECHNICAL
DOCUMENTS AND SOURCE CODE**

WHEREAS, the Court entered a Protective Order to protect party and nonparty confidential business information in the above-referenced action on June 16, 2015 (ECF No. 33) (“Protective Order”); and

WHEREAS, Microsoft Corporation (“Microsoft”), a nonparty to this action, has agreed to produce certain highly confidential technical information and make certain highly confidential source code available for review;

WHEREAS Microsoft, Plaintiff Avago Technologies General IP (Singapore) Pte. Ltd., and Defendants ASUSTeK Computer Inc. and ASUS Computer International (each a “party” or,



collectively, “parties”) have agreed to additional provisions to protect against misuse or disclosure of such Microsoft confidential information;

THEREFORE, The Parties HEREBY STIPULATE AND AGREE, and request a protective order in accordance with Fed. R. Civ. P. 26(c), as follows:

A. Relationship to Protective Order

This Order shall not diminish any existing restriction with respect to designated materials. The parties acknowledge and agree that this Stipulated Supplemental Order is a supplement to the Protective Order and that the Protective Order applies to all material designated pursuant to this Stipulated Supplemental Protective Order. To the extent that any provisions in this Stipulated Supplemental Protective Order and the Protective Order conflict or otherwise differ, however, the provisions providing the higher level of protection to documents and information shall govern.

B. Scope

This Order shall apply to all Microsoft technical documents or Source Code that are produced or provided for inspection in this action. The protections conferred by this Stipulated Supplemental Protective Order cover not only designated Microsoft materials, but also any information copied or extracted therefrom, as well as all copies, excerpts, summaries, or compilations thereof. Any Party who extracts information from designated Microsoft material is required to appropriately designate any derivative materials created, to the extent that any derivatives are allowed pursuant to this Stipulated Supplemental Protective Order.

C. Microsoft Technical Documents

Any document that Microsoft designates as “OUTSIDE COUNSEL EYES ONLY” may not be shared with any in-house counsel under Paragraph 5(c) of the Protective Order. Otherwise, such documents are to receive all the same protections as if they had been designated “RESTRICTED—ATTORNEYS’ EYES ONLY” under the Protective Order.

D. Microsoft Source Code

1. Microsoft Source Code shall mean register transfer level code, firmware, and other source code of Microsoft that is made available for review under the terms of this Stipulated Supplemental Protective Order. Nothing in this Stipulated Supplemental Protective Order shall be



1 construed as a representation or admission by Microsoft that source code is properly discoverable in
2 this action, but the terms of this Stipulated Supplemental Protective Order shall govern in the event
3 that Microsoft Source Code is made available for review.

4 2. Microsoft Source Code shall be made available for inspection electronically at the
5 office of one of Microsoft's outside counsel, during regular business hours (usually 9 a.m. to 5 p.m.
6 local time). The parties will work in good faith to select dates for the review. Microsoft shall make
7 the Microsoft Source Code available for inspection on a stand-alone, non-networked personal
8 computer running a reasonably current version of the Microsoft Windows operating system. If the
9 inspecting parties wish to install any other software on the stand-alone computer for reviewing the
10 Microsoft Source Code, the inspecting parties shall provide, at their own expense, copies of the
11 requested software at least five (5) days in advance of the date on which they wish to have the
12 software available for use on the stand-alone computer. Microsoft shall have an opportunity to
13 review and object to said software for good cause.

14 3. At the source code review, the receiving party may identify to Microsoft the lines of
15 Source Code for which it seeks production of printouts of such lines of code. The receiving party
16 shall request the production of printouts of only such portions of Microsoft source code as are
17 reasonably necessary to prosecute or defend against (1) Plaintiff's claims of alleged infringement in
18 this case; or (2) Defendants' defenses and counterclaims in this case. If Microsoft objects that any
19 identified Source Code is not reasonably necessary to any case preparation activity, Microsoft shall
20 make such objection known to the receiving party within five (5) business days of the identification
21 of the Source Code by the receiving party. If, after meeting and conferring, Microsoft and the
22 receiving party cannot resolve the objection, Microsoft and the receiving party shall each be entitled
23 to seek a judicial resolution of whether or not the identified source code in question is reasonably
24 necessary to any case preparation activity. Microsoft or its counsel will keep all original printouts.
25 In the absence of any objection, or upon resolution of any dispute by the Court, Microsoft will
26 provide three (3) hard copies of the printouts to each of counsel for Plaintiff and counsel for
27 Defendants within five (5) business days after the period for objection has expired, Microsoft and
28



1 the receiving party have resolved any objection, or the Court has entered an order resolving the
2 dispute in favor of the receiving party.

3 4. Notwithstanding the provisions of Paragraph 10(g) of the Protective Order, and
4 except as provided in Paragraph 9 below, no additional hard copies or electronic copies of the
5 Microsoft Source Code printouts shall be made by the receiving party in any circumstances. Hard
6 copies of Microsoft Source Code printouts may not be converted into an electronic document and/or
7 scanned using optical character recognition ("OCR") technology. All Microsoft Source Code
8 printouts shall be logged by receiving party's outside counsel of record as described in Paragraph
9 D.12 below.

10 5. Persons reviewing Microsoft Source Code shall not print source code that they have
11 not reviewed at Microsoft's facility in order to review it elsewhere in the first instance, as all parties
12 acknowledge and agree that the purpose of the protections herein would be frustrated by such
13 actions.

14 6. Parties reviewing Microsoft Source Code are prohibited from bringing outside
15 electronic devices, including but not limited to laptops, floppy drives, zip drives, or other hardware
16 into the review room. Nor shall any cellular telephones, personal digital assistants (PDAs),
17 Blackberries, cameras, voice recorders, Dictaphones, external or portable telephone jacks, or other
18 outside electronic devices be permitted inside the review room, except for medical devices,
19 implants, or equipment reasonably necessary for any legitimate medical reason.

20 7. If any authorized person reviewing Microsoft Source Code seeks to take notes, all
21 such notes will be taken on bound (spiral or other type of permanently bound) notebooks. No loose
22 paper or other paper that can be used in a printer may be brought into the secure room. The
23 reviewer may take notes relating to the Source Code but may not copy the Source Code into the
24 notes. All such notes must be marked as "CONFIDENTIAL MICROSOFT SOURCE CODE –
25 OUTSIDE COUNSEL EYES ONLY."

26 8. Where necessary or required by the Court, the receiving party may make copies of
27 Microsoft Source Code printouts in the form required to be included in pleadings filed under seal, to
28 be included as exhibits in expert reports, or to be used as exhibits in depositions or at trial, but only



1 where: (a) no reasonable alternative (such as referencing the Microsoft Source Code by page and
2 line number) exists to using Microsoft Source Code materials; (b) such pleadings, expert reports,
3 and transcripts from such depositions or trial themselves are also designated “CONFIDENTIAL
4 MICROSOFT SOURCE CODE – OUTSIDE COUNSEL EYES ONLY”; and (c) the party seeking
5 to use Microsoft Source Code in this manner notifies Microsoft at least five business days in
6 advance of doing so. In the event copies of Microsoft Source Code printouts are used as exhibits at
7 a deposition, the printouts shall not be provided to the court reporter at the conclusion of the
8 deposition. All paper copies of Source Code shall be securely destroyed if they are no longer
9 necessary (*e.g.*, extra copies at the conclusion of a deposition). In no circumstances shall electronic
10 copies of Microsoft Source Code printouts be made for purpose of service of filings.

11 9. In addition to other reasonable steps to maintain the security and confidentiality of
12 Microsoft Source Code printouts, they must be maintained by the receiving party in a locked
13 storage container at outside counsel of record’s offices or at the offices of an outside consultant or
14 expert authorized to receive Microsoft Designated Materials pursuant to Section E when not being
15 actively reviewed. Printouts or copies may not be transferred by U.S. mail or placed in checked
16 luggage; they must be carried personally by an individual responsible for safe-guarding them.
17 Printouts or copies may be transferred using a reliable courier service such as FedEx, UPS, and the
18 like, so long as package tracking is used.

19 10. The receiving party’s outside counsel of record shall keep detailed log(s) recording
20 the identity of each individual beyond outside counsel of record to whom each hard copy of any
21 Microsoft Source Code printout was provided or made available, when it was provided or made
22 available to that person, and which pages were accessed. Microsoft may request in writing
23 (including email) a copy of the log at any time, and the log must be provided by the receiving party
24 within fourteen (14) days of any such request.

25 11. Unless otherwise ordered by the Court or permitted in writing by Microsoft, a
26 receiving party may disclose any information, document, or thing designated “CONFIDENTIAL
27 MICROSOFT SOURCE CODE – OUTSIDE COUNSEL EYES ONLY” only to those persons
28 identified in Paragraphs 5(a), 5(b), 5(e) (as modified in Section E below), and 5(g) of the Protective



1 Order. For clarity, an outside consultant's or expert's direct reports and supporting personnel may
2 not be allowed access as contemplated by Footnote 2 on page 6 of the Protective Order unless they
3 are separately disclosed to Microsoft pursuant to the requirements of Paragraph 5(e). Additionally,
4 unless otherwise ordered or agreed in writing by Microsoft, which agreement shall not be
5 unreasonably withheld, Microsoft Source Code printouts may not be disclosed to document vendors
6 (such as third-party copy vendors) or mock jurors.

7 12. The Parties acknowledge that Microsoft Source Code printouts also may be subject
8 to the US government export control and economic sanctions laws, including the Export
9 Administration Regulations ("EAR", 15 CFR 730 et seq., <http://www.bis.doc.gov/>) administered by
10 the Department of Commerce, Bureau of Industry and Security, and the Foreign Asset Control
11 Regulations (31 CFR 500 et seq., <http://www.treas.gov/offices/enforcement/ofac/>) administered by
12 the Department of Treasury, Office of Foreign Assets Control ("OFAC"). Receiving Parties and
13 their Outside Consultants may not directly or indirectly export, re-export, transfer or release
14 (collectively, "Export") any Microsoft Source Code printout to any destination, person, or entity
15 outside the United States.

16 13. Any party intending to disclose or discuss Microsoft Source Code printouts at
17 depositions must give at least five (5) days' advance notice to Microsoft. In the event a deposition
18 is scheduled with less than five (5) days' advance notice, the party intending to disclose or discuss
19 Microsoft Source Code printouts at that deposition will give as much advance notice to Microsoft as
20 possible.

21 **E. Disclosure of Microsoft Designated Materials to Consultants and Experts**

22 Any party wishing to disclose materials designated by Microsoft as "CONFIDENTIAL
23 MICROSOFT SOURCE CODE – OUTSIDE COUNSEL EYES ONLY" or "OUTSIDE COUNSEL
24 EYES ONLY" to any outside consultant or expert may do so only after complying with the notice
25 provisions of Paragraph 5(e) of the Protective Order (except that Microsoft shall have fourteen days
26 from the date of the objection to file any motion seeking a protective order, if the parties are unable
27 to negotiate a resolution without motion practice meanwhile) and providing Microsoft with an
28



1 executed version of the Certification found in Exhibit 1 to this Stipulated Supplemental Protective
2 Order for each such outside consultant or expert.

3 **F. Notice Before Use at Hearing or Trial**

4 Notwithstanding the provisions of Paragraph 17 of the Protective Order, any party using any
5 designated Microsoft information at any hearing or trial in this litigation must give Microsoft at
6 least fourteen (14) days' advance notice of their intent to do so.

7 **G. Prosecution, Development, and Patent Acquisition Consulting Bar**

8 1. Unless otherwise permitted in writing between Microsoft and any receiving party,
9 any individual who personally receives any material designated "CONFIDENTIAL MICROSOFT
10 SOURCE CODE – OUTSIDE COUNSEL EYES ONLY" or "OUTSIDE COUNSEL EYES
11 ONLY" shall not participate in amending or drafting patent specifications or claims before a Patent
12 Office of any patent or patent application substantially related to the particular technology or
13 information disclosed in the designated Microsoft materials, from the time of receipt of such
14 material through until at least two years after the individual person(s) cease to have access to the
15 designated materials (and any derivative materials). This provision shall not apply to post-grant
16 adversarial proceedings, including reexamination or opposition proceedings filed in relation to the
17 patents-in-suit or foreign counterparts.

18 2. Unless otherwise permitted in writing between Microsoft and any receiving party,
19 any Outside Consultant retained on behalf of any receiving party who is to be given access to
20 material designated as "CONFIDENTIAL MICROSOFT SOURCE CODE – OUTSIDE COUNSEL
21 EYES ONLY" or "OUTSIDE COUNSEL EYES ONLY" must agree in writing not to perform
22 commercial product development work substantially related to the particular technology or
23 information disclosed in the designated Microsoft materials from the time of first receipt of such
24 material through until at least two years after the Outside Consultant ceases to have access to the
25 designated material (and any derivative materials).

26 3. Unless otherwise permitted in writing between Microsoft and any receiving party,
27 any Outside Consultant retained on behalf of the receiving party and any Outside Counsel for the
28 receiving party who is to be given access to material designated as "CONFIDENTIAL



MICROSOFT SOURCE CODE – OUTSIDE COUNSEL EYES ONLY” or “OUTSIDE COUNSEL EYES ONLY” must agree in writing not to advise anyone regarding the purchase or acquisition of patents for assertion against Microsoft from the time of first review of such material and through two years after their last access to the designated materials (and any derivative materials).

H. Duration

Even after the termination of this action, the confidentiality and other obligations imposed by this Stipulated Supplemental Protective Order shall remain in effect.

I. Final Disposition

The provisions of Paragraph 23 of the Protective Order shall apply to designated Microsoft materials except that, for clarity, all copies of all Microsoft Source Code printouts shall be returned to Microsoft or Microsoft’s outside counsel within 30 days of the conclusion of this litigation.

Dated: October 7, 2015

Respectfully submitted,

Respectfully submitted,

/s/ Matthew C. Holohan

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*Counsel for Plaintiff Avago Technologies
General IP (Singapore) Pte. Ltd.*

*Counsel for Defendants ASUSTeK Computer,
Inc. and ASUS Computer International*

IT IS SO ORDERED

DATED: 2/1/2016



EXHIBIT 1**CERTIFICATION OF CONSULTANT REGARDING STIPULATED SUPPLEMENTAL
PROTECTIVE ORDER FOR MICROSOFT CONFIDENTIAL MATERIALS**

I, _____, of _____,
 am an employee of _____. I am not an employee of the party
 who retained me in this action, nor am I an employee of a competitor of either Microsoft or any
 party to this action. I will not use any Microsoft confidential materials or any information derived
 from them for any purpose other than my work in this litigation, *Avago Technologies General IP*
(Singapore) Pte. Ltd. v. ASUSTek Computer Inc. and ASUS Computer International, Case No.
 2:15-cv-239 (E.D. Tex.). I agree not to participate in amending or drafting patent specifications or
 claims before a Patent Office of any patent or patent application substantially related to the
 particular technology or information disclosed in any designated Microsoft materials, I agree not
 to perform commercial product development work relating to the technology or information
 disclosed in any designated Microsoft materials, and I agree not to advise anyone regarding the
 purchase or acquisition of patents for assertion against Microsoft having claims that read on
 Microsoft products from the time of my first review of such material and through until two years
 after I last access any Microsoft material designated “CONFIDENTIAL MICROSOFT SOURCE
 CODE – OUTSIDE COUNSEL EYES ONLY” or “OUTSIDE COUNSEL EYES ONLY” as well
 as any materials that contain or disclose Microsoft Material so designated.

I state under penalty of perjury under the laws of the United States of America that the
 foregoing is true and correct.

Executed On _____.

 [Printed Name]

 [Signature]

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